

Case No. 14-cr-00175-TEH

ORDER REGARDING BIFURCATION OF THE ALTERNATIVE FINES ACT ALLEGATIONS

10 On December 8, 2015, this Court granted Defendant Pacific Gas & Electric
11 (“PG&E”)’s Motion to Dismiss the Government’s Alternative Fines Act *loss* allegations,
12 on the basis that litigating the gross pecuniary losses suffered by the more than 500 victims
13 of the San Bruno explosion would unduly complicate these proceedings. Docket No. 201
14 at 3-4. But the Court reserved ruling on whether the Government’s Alternative Fines Act
15 *gains* allegations should be dismissed, because the Government had provided insufficient
16 information for the Court to determine whether proving the gross pecuniary gains that
17 stemmed from PG&E’s alleged regulatory malfeasance would unduly complicate these
18 proceedings. *Id.* at 5-6.

19 The Court therefore directed the Government to submit “notice of the sort of
20 evidence and approximate number and type of witnesses that it intends to present to the
21 jury regarding the gross gains PG&E derived from the charged offenses.” *Id.* at 6. The
22 Government timely complied, submitting notice on January 11, 2016 of the five records
23 and three witnesses it intends to use to prove PG&E’s gross pecuniary gains. Docket No.
24 235. PG&E responded to this notice on January 19, 2016, arguing that the Government’s
25 submission only confirms that allowing the Alternative Fines Act gains allegations to
26 proceed would create “exceedingly difficult questions of causation that will unduly
27 complicate the trial.” Docket No. 260.

1 As an initial matter, the Court is not convinced that the Government's plan to prove
2 PG&E's gross pecuniary gains would be as complex as PG&E would have the Court
3 believe. Nevertheless, having carefully considered the parties' submissions, the Court now
4 finds that bifurcating the Alternative Fines Act gains allegations into a second trial phase is
5 the best way to ensure that PG&E's Sixth Amendment rights are protected, without
6 prematurely eliminating what may be an appropriate application of the Alternative Fines
7 Act.

8 A district court has discretion in deciding whether to bifurcate criminal proceedings.
9 *See Contee v. United States*, 410 F.2d 249, 250 (D.C. Cir. 1969) ("Bifurcation lies in the
10 first instance within the 'sound discretion' of the trial court."). This Court previously
11 requested briefing on the propriety of bifurcating these proceedings. Docket Nos. 192,
12 194. The only argument offered against bifurcation by either party was that it would be
13 unfair to force PG&E to prepare a defense to allegations that may never come to fruition,
14 either because PG&E is acquitted on all counts or because the Court later determines that
15 imposing an Alternative Fine would be inappropriate. *See* Docket No. 194 at 1 ("If the
16 [Alternative Fines Act] allegations are not dismissed now, the parties and the Court will
17 have no alternative but to prepare them for trial.").

18 This argument against bifurcation, which boils down to speculative inefficiency, is
19 unavailing in light of the known and substantial benefits to bifurcation. As the
20 Government aptly argued, after the guilt phase "the Court will [] be well-informed as to
21 what evidence has already been admitted . . . and be best able to determine whether
22 proving gross gain or loss 'would unduly complicate or prolong the sentencing phase.'"
23 Docket No. 192 at 2-3. In the context of what PG&E has repeatedly referred to as "one of
24 the more complex criminal trials ever tried in this district" (Docket No. 126 at 2), it seems
25 especially prudent to defer deciding whether gross gains evidence would unduly
26 complicate these proceedings until after the Court fully understands the complexity of the
27 evidence offered during the guilt phase. And perhaps most importantly, after the guilt
28 phase the Court will know of which counts, if any, PG&E has been convicted, and will

1 therefore know for which regulatory violations the Government would need to prove that
2 PG&E realized gross pecuniary gains.

3 The parties shall therefore come prepared to discuss the details of bifurcating this
4 trial at the March 7, 2016 pretrial conference. The parties shall also include bifurcation
5 among the issues addressed in the joint pretrial conference statement that is now due no
6 later than Monday, February 22, 2016.

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8 **IT IS SO ORDERED.**

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10 Dated: 02/02/16

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THELTON E. HENDERSON
United States District Judge

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United States District Court
Northern District of California